IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

MACA.No. 461 of 2005()

OPMV.70/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
.....

APPELLANT/3RD RESPONDENT:

UNITED INDIA INSURANCE COMPANY LIMITED
TIRUR, NOW REPRESENTED BY ITS MANAGER,
THIRD PARTY CLAIMS CELL, M.G. ROAD, KOCHI-16.

BY ADV. SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENTS/PETITIONERS:
---

1. VALLI, W/O. BHUVANESWARAN,
MAROT CHALIL HOUSE, THRIKKENAPURAM P.O.,
THAVANOOR, PONNANI TALUK, PIN-679 571.

2. VANDANA (MINOR)
D/O. BHUVANESWARAN, DO. DO.

3. MANIKANDAN (MINOR),
S/O. BHUVANESWARAN, DO. DO.
(MINOR RESPONDENTS 2 AND 3 ARE REPRESENTED BY
THIER MOTHR 1ST RESPONDENT).

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SMT.K.L.SREEKALA
SRI.PRABHU VIJAYAKUMAR
SRI.KRISHNADAS P NAIR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.958/2005 IN M.A.C.A.NO.461 OF 2005

DISMISSED

13.6.2007

SD/- J.B.KOSHY, JUDGE.
SD/- K.P.BALACHANDRAN, JUDGE.

// TRUE COPY //

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.A.C.A.No.461 OF 2005

Dated 13th June, 2007

JUDGMENT

Koshy,J.

A headload worker died in a motor accident due to the negligence of the driver of the vehicle insured by the appellant insurance company and he left his wife aged 43 years and two minor children. Rs.5,00,000/= was claimed as compensation by the dependants. In the claim petition it was stated that the deceased was earning Rs.6,000/= per month. PW1, his wife, deposed that he was earning Rs.6,000/= to 7,000/= per month as he was a registered headload worker and Ext.A7 was produced showing registration. Even though the claim was that he was earning Rs.6,000/= per month, the Tribunal has taken only Rs.2,000/= as dependency income and calculated compensation taking 15 as the multiplier. It is contended that taking guidance from the second schedule 13 ought to have been taken as the multiplier as Tribunal has accepted Ext.A7 certificate in which age of the deceased at the time of the accident would be 47. We have verified Ext.A7 which shows that his date of birth is 5.11.1957 and completed years as on 30.8.1996 was 39. If his date of birth as seen from the identity card produced (Ext.A7) is taken into consideration, on the date of accident i.e., 26.8.2000, he has

completed the age of 43. As per ration card his age was 40 and in the postmortem report his age was shown as 45. A three member bench of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451), held that the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163-A, but, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act. Since the victim of the accident in that case was aged 32, considering the second schedule, Hon'ble Supreme Court accepted 17 as the multiplier. In ***United India Insurance Co. Ltd.*** v. ***Patricia Jean Mahajan and others*** (JT 2002 (5) SC 74), the Apex Court held that, except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to the introduction of the multiplier system, were held to be no more good system. It was further held that normally the multiplier, as indicated in the second schedule, should be applied. Though the second schedule is found to be a safe guide for the purpose of calculation of the amount of compensation, in special circumstances, it can be varied. In that case, it was also held that if the multiplicand is very high, a lesser multiplier can be taken. In ***Abati Bezbaruah*** v. ***Dy.***

Director General, Geological Survey of India and another ((2003) 3 SCC 148), it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of Section 166 of the Motor Vehicles Act. Deviation from the structured formula can be resorted to only in exceptional cases and ordinarily the above multiplier system should be followed. The Tribunal took the age between 40 and 45 and taking guidance from the second schedule, 15 was taken as the multiplier. Considering the fact that only low multiplicand was taken and also considering the age of the dependants and age of the deceased and multiplier fixed in the second schedule, we are of the view that no interference is required in the impugned judgment.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

tks